

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

FAMILY COURT APPEAL Nos.138 of 2010 and 124 of 2012

COMMON JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

Since the facts of the case, parties, and the issue involved in both these appeals are identical, both these appeals are taken up together and are being disposed of by this common judgment.

2. Both these appeals under Section 19(1) of the Family Courts Act, 1984, are filed challenging the order, dated 10.03.2010, passed in FCOP No.894 of 2007 by the Judge, Family Court, Hyderabad.

3. The subject FCOP No.894 of 2007 was filed before the Court below by the divorced wife (appellant in FCA No.124 of 2012) against her husband and others (appellants in FCA No.138 of 2010) under Section 3(1)(a)(b)(c)(d) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, and Section 7(b) of the Family Courts Act, for recovery of Meher amount, Iddat period amount, dowry amount and Jahez articles. The Court below, vide impugned order, dated 10.03.2010, partly

allowed the subject FCOP granting Meher amount of Rs.11,000/- plus the relief referred in points 'a' to 'e' therein, i.e., (a) value of 12 grams of gold; (b) maintenance for Iddat period @ Rs.8,000/- per month instead of Rs.30,000/- per month, totalling to Rs.24,000/-; (c) Jahez articles, gold and silver articles or its worth Rs.2,61,950/-; (d) gift articles or its value of Rs.25,900/-; and (e) gold and silver articles or its value worth Rs.24,865/-. Aggrieved by the same, the wife filed FCA No.124 of 2012 and the husband and others filed FCA No.138 of 2010.

4. We have heard the submissions of learned counsel for both sides and perused the record. For convenience of discussion, the parties will be hereinafter referred to as per their array before the Court below.

5. Learned counsel for the appellants in FCA No.138 of 2010 and respondents in FCA No.124 of 2012 (husband and others) would contend that there is no proof that the Meher amount payable to the wife was Rs.11,000/-. Without there being any proof, the Court below erroneously held that the wife is entitled for one old tula gold and Jahez articles, gold and silver articles or its worth Rs.2,61,950/-. Furthermore, though Ex.P2-List of

Jahez Articles runs into three pages and the signature of the husband is found only on one page, the Court below erroneously considered Ex.P2 and granted Rs.2,61,950/- towards the value of Jahez articles given in the marriage. Further, the Court below, without there being any evidence of gifting of articles in marriage, erroneously held that the wife is entitled to take back gold and silver articles or its worth Rs.24,865/- as shown in Ex.P4. The wife is not entitled for the maintenance amount of Rs.24,000/- for Iddat period @ Rs.8,000/- per month. Without any cogent and convincing evidence on record, the Court below erroneously allowed the subject FCOP in part as indicated above. The impugned order, dated 10.03.2010, is legally unsustainable and ultimately prayed to allow the appeal by the husband and dismiss the appeal filed by the wife.

6. *Per contra*, the learned counsel for the appellant in FCA No.124 of 2012 and respondent in FCA No.138 of 2010 (wife) would contend that the Meher amount agreed in between the parties was Rs.11,000/- plus one old tula gold (12 grams of gold). Further, the Court below is unjustified in granting Iddat period maintenance @ Rs.8,000/- per month for three months. There is substantial evidence to prove that Jahez articles worth

Rs.2,61,950/- were given to the husband in the marriage and the husband had also acknowledged the receipt of the same. There is also evidence of the husband to that effect. There is no infirmity in holding that the wife is entitled to get back Jahez articles, gold and silver or its worth Rs.2,61,950/-, as shown in Ex.P2. It is common knowledge that gifts will be given in marriage. In the instant case, there are gold and silver articles worth Rs.24,865/-, given as gifts in marriage, as shown in Ex.P4. Therefore, directing the husband to pay the value of the gift articles worth Rs.25,900/- is not excessive. In fact, the court below ought to have directed the husband to return Rs.2 lakhs given to him towards Jode Ki Rakham/dowry and a sum of Rs.50,000/- given towards purchase of Hero Honda Motorcycle. The Court below ought to have appreciated that once the execution of Ex.P2 is proved, the Court below should have accepted the same in toto and erred in partly allowing the subject FCOP. The Court below also erred in disbelieving Ex.P6- salary certificate of the wife and in allowing the subject FCOP in part and ultimately prayed to allow the appeal filed by the wife and dismiss the appeal filed by the husband.

7. In view of the above rival submissions, the point that arises for determination in both these appeals are as follows:

1. *Whether the Court below is justified in granting Meher amount of Rs.11,000/- plus (a) value of 12 grams of gold; (b) maintenance for Iddat period @ Rs.8,000/- per month instead of Rs.30,000/- per month, totalling to Rs.24,000/-; (c) Jahez articles, gold and silver articles or its worth Rs.2,61,950/-; (d) gift articles or its value of Rs.25,900/-; and (e) gold and silver articles or its value worth Rs.24,865/- to the wife?*
2. *Whether the wife is entitled for Rs.2 lakhs said to have been given as dowry/Jode ki Rakham and Rs.50,000/- given towards purchase of Hero Honda Motorcycle to the husband by her father?*
3. *To what result?*

POINTS:-

8. As seen from Ex.P1-Marriage Certificate and the oral and documentary evidence, the Meher agreed to be paid to the wife was Rs.11,000/- plus one old tula gold (12 grams of gold). Admittedly, the marriage between the parties took place on 12.08.2005 and the husband has pronounced divorce on 06.07.2007. Since the marriage in between the parties had broken down, the wife is entitled for maintenance during her iddat period. The Court below, taking into consideration the fact that the husband is a Government servant, granted maintenance for Iddat period @ Rs.8,000/- per month or a period of three months, totalling to Rs.24,000/-. In the circumstances of the

case, granting Rs.8,000/- per month towards maintenance for Iddat period for a period of three months totalling to Rs.24,000/- is quite reasonable, as both the husband and the wife are Government servants. There is ample evidence on record to show that the Meher agreed to be paid to the wife was Rs.11,000/- plus one old tula gold (12 grams of gold) and the Court below is justified in granting the same to the wife, basing on marriage certificate under Ex.P1 etc.

9. A serious question is raised with regard to the Jahez articles mentioned in Ex.P2-list of Jahez articles. In fact, the husband did not sign on the said document and it bears the signature of the wife. There is cogent and convincing evidence from the side of the wife to substantiate the same. Furthermore, there is specific admission of the husband that he received the Jahez articles one day prior to the marriage. All these circumstances clinchingly prove that the Jahez articles mentioned in Ex.P2 were given to the husband on behalf of the wife and its worth is Rs.2,61,950/-. Therefore, the finding recorded by the Court below that the wife is entitled to get back Jahez articles, gold and silver articles worth Rs.2,61,950/-, as shown in Ex.P2, cannot be faulted.

10. Further, the Court below, placing reliance on Ex.P3-list of articles prepared during the performance of marriage as the articles received as presentations, the Court took Ex.P3 as well as the oral evidence of PW.1 etc., into consideration and was pleased to award Rs.25,900/- to the wife. These finds recorded by the Court below are based on oral and documentary evidence on record. Therefore, it is not proper to take a different view. As regards the articles said to be in possession of the husband, which are detailed in Ex.P4, admittedly, Ex.P4 is not signed by the husband. There is no mention as to on what account these articles were given to the husband or kept in the possession of the husband. There are no legally acceptable evidence to demonstrate that any article/valuables were given to the husband, as mentioned in Ex.P4. Therefore, the Court below ought not have granted the value of the articles mentioned in Ex.P4, i.e., Rs.24,865/-, to the wife. In view of the material evidence on record, the wife is not entitled for Rs.24,865/- ordered to paid to her, as shown in Ex.P4.

11. A contention is raised on behalf of the wife that Rs.2 lakhs was given towards Jodey ke Rakham/dowry and Rs.50,000/-

was given towards purchase of Hero Honda Motorcycle. There is no document to show that Rs.2 lakhs was given as Jodey ke Rakham/dowry and Rs.50,000/- was given towards purchase of Hero Honda Motorcycle. There is only oral testimony of RW.1 to that effect, besides other testimonies. Had the said amount was given to the husband, a receipt would have been obtained evidencing the receipt of the same. In the absence of any such receipt, payment of Rs.2 lakhs towards Jodey ke Rakham/dowry and Rs.50,000/- towards purchase of Hero Honda Motorcycle becomes doubtful. The Court below had extensively dealt with this aspect and negated the same, assigning reasons. This Court is in agreement with the findings recorded by the Court below on this aspect.

12. In view of these circumstances, the order, dated 10.03.2010, passed in FCOP No.894 of 2007 by the Judge, Family Court, Hyderabad, is modified as hereunder:

The wife (appellant in FCA No.124 of 2012 and respondent in FCA No.138 of 2010) is entitled to the Meher amount of Rs.11,000/- plus

- a. value of 12 grams of gold;**
- b. maintenance for Iddat period @ Rs.8,000/- per month for three months, totalling to Rs.24,000/-;**

- c. Jahez articles, gold and silver articles or its worth Rs.2,61,950 / -, as shown in Ex.P2;
- d. Gift articles or its worth Rs.25,900 / -.

13. Since this is a long pending litigation, the husband is directed to pay the amount as indicated above to the wife within a period of one (1) month from today. The amount already paid by the husband to the wife during the pendency of these appeals is liable to be deducted from the amount to be paid.

14. Both the Family Court Appeals are disposed of accordingly.
Miscellaneous petitions, if any, pending in both these appeals, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

17th October, 2022
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